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California Regional Water Quality Control Board

Santa Ana Region

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Arnold Schwarzenegger
Governor

May 25, 2007

Bob Brendza
Burlington Northern Santa Fe Railway Co.
740 Carnegie Drive
San Bernardino, CA 92408

CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR THE PROPOSED THIRD MAIN RAIL TRACK, CAJON PASS, SAN BERNARDINO COUNTY (ACOE REFERENCE NO. 200600615 – GS)

Dear Mr. Brendza:

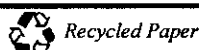
On April 12, 2007, we received an application for Clean Water Act Section 401 Water Quality Standards Certification (Certification), submitted on your behalf by URS Corporation, for the proposed third main rail track in the Cajon Pass area of San Bernardino County. The application was deemed complete on May 12, 2007. This letter responds to your request for certification that the proposed project, described in your application and summarized below, will comply with State water quality standards outlined in the Water Quality Control Plan for the Santa Ana River Basin (1995) and subsequent Basin Plan amendments:

Project Description:

Construction of a third main rail track within the existing Burlington Northern Santa Fe Railway Company (BNSF) right-of-way between the Keenbrook mile post 69.5 and the Summit mile post 55.7 – a distance of 15.9 miles¹. The construction of the rail track will include the re-alignment of Swarthout Canyon Road for a distance of 1,200 feet in order to move it away from the additional rail track. The construction of the new rail track will involve the construction of new culverts and the extension of existing culverts, and four new bridges. Two temporary bridges will be constructed across Cajon Creek. Embankment fills for the new rail track that encroach into Cajon Creek will be protected from erosion and scour using rip-rap. Permanent erosion protection and energy dissipation structures will be placed on existing culvert outfalls in the project area. Approximately 664,000 cubic yards of excess cut material will be generated during grading activities. This material will be disposed of at an old borrow site used during the construction of the Interstate 15 and will result in the fill of waters there. As

¹ For reference, mile Post 0.0 is in the City of Barstow

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a result of the above, a total of 74 discrete discharges of fill to waters of the U.S. will occur. Construction duration is estimated to be 12-months. A small portion of the new rail track lies within the Lahontan Regional Water Quality Control Board's watershed, however, staff of the Lahontan Regional Board and the State Water Resources Control Board elected, in electronic messages dated May 24, 2006, to defer to the issuance of a Certification by the Santa Ana Regional Water Quality Control Board. The majority of the project is located within land controlled by the U.S. Forest Service in the Cajon Pass area of San Bernardino County in Sections 6, 7, 19, 29, 30, 32, and 33 of Township 2 South, Range 6 West; Sections 1, 12, 13 and 24 of Township 2 South, Range 5 West ; Sections 22, 23, 24, 26, 27, 34, 35, and 36 of Township 3 North, Range 6 West the U.S. Geological Survey *Cajon, California*, 7.5-minute topographic quadrangle map (34 deg. 16 min. 41 sec. N/-117 deg. 27 min. 15 sec. W).

Receiving water: Cajon Creek and various tributaries thereto and Lone Pine Canyon Creek.

Fill area: See Table 1 below.

| | Areas of waters of U.S. subject to fill (acres/linear feet) | |
|-----------------------|---|------------|
| | Permanent | Temporary |
| Wetlands/Riparian | 1.56 | 1.71 |
| Non-wetland streambed | 1.39 | 1.72 |
| Total | 2.95/4,749 | 3.43/1,368 |

Dredge volume: N/A

Federal permits: U.S. Army Corps of Engineers Individual Permit No. 200600615
U.S. Forest Service Special Use Permit

You have proposed to mitigate water quality impacts as described in your Certification application. The proposed mitigation is summarized below:

Onsite Water Quality Standards Mitigation Proposed:

- Outlet protection/energy dissipation devices will be constructed on culverts.
- Existing detention basins will be enlarged for increased storage capacity in order to maintain pre-project storm flows for the 10-year and 100-year storm events.

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- Brow ditches will be constructed above slopes to reduce erosion.
- Retaining walls will be used to minimize impacts to adjacent waters of the U.S.
- Additional site-specific best management practices (BMPs) will be specified in the site's Storm Water Pollution Prevention Plan (SWPPP).
- According to a Final Habitat Mitigation and Monitoring Plan prepared by URS Corporation dated March 2007: 4.8 acres of riparian habitat will be created through floodplain excavation; 14.7 acres of Riversidean alluvial fan sage scrub and 1.0 acre of southern mixed chaparral will be enhanced through the eradication of invasive plant species; and 5.6 acres of southern cottonwood-willow riparian forest and river wash habitats will be preserved. In addition, temporarily impacted waters of the U.S. will be restored.

Offsite Water Quality Standards Mitigation Proposed:

- No offsite water quality standards mitigation is proposed.

Should the proposed project impact state- or federally-listed endangered species or their habitat, implementation of measures identified in consultation with U.S. Forest Service, U.S. Fish and Wildlife Service, and the California Department of Fish and Game will ensure those impacts are mitigated to an acceptable level. Appropriate BMPs will be implemented to reduce construction-related impacts to Waters of the State. This project is over one acre. Therefore, coverage under the State Water Resources Control Board's General Permit for Storm Water Discharges Associated with Construction Activity, Water Quality Order 99-08 DWQ, is required, as is development of a SWPPP to control the discharge of pollutants from the project site.

The proposed project is located within a scenic area, managed by the U.S. Forest Service for public recreation. The project includes the construction of substantial retaining walls adjacent to waters of the U.S. The construction of the retaining walls has the potential to impact the non-contact water recreational beneficial uses of those waters by adversely affecting their aesthetic enjoyment. Condition 1 below requires that the retaining walls be blended into the landscape using appropriately colored materials, materials that impart an irregular appearance, or similar methods.

During a pre-application site visit on August 18, 2005, Regional Board staff observed several culverts in the project area that had indications of hydraulic deficiencies, such as erosion in the vicinity of the outlets. In at least one instance, there appeared to have been multiple efforts to stop the erosion using un-engineered methods that subsequently failed. Regional Board staff is not aware of any authorizations issued for the related discharges of fill.

In the hydrology reports submitted with your application, many of the culverts in the project area are identified as being inadequately sized to convey storm water runoff from larger storm events, creating backwater conditions upstream of the culverts. Excess flow travels



along the railway until reaching a culvert with sufficient capacity. The backwater condition creates hydraulic head that forces flow through the culvert. The forced flow may cause or contribute to erosion observed in the vicinity of some the outlets of the culverts, and to subsequent violations of water quality standards. This matter was brought to the attention of BNSF representatives during the August 18, 2005 meeting and a meeting on April 27, 2006. At the request of Regional Board staff, the proposed project includes the construction of outlet protection and energy dissipation structures at all culvert outlets in the project area in order to address hydraulic deficiencies noted above.

You have submitted an application for coverage under an individual permit from the U.S. Army Corps of Engineers in compliance with Section 404 of the Clean Water Act. You have applied for a Streambed Alteration Agreement with the California Department of Fish and Game. Pursuant to CEQA, the County of San Bernardino adopted a final joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) on April 10, 2007. The EIS/EIR was prepared in cooperation with the U.S. Army Corps of Engineers pursuant to the National Environmental Policy Act (NEPA). The Executive Officer has considered the EIS/EIR in the issuance of this Certification.

This 401 Certification is contingent upon the execution of the following conditions:

1. In order to minimize adverse aesthetic impacts to the recreational use of waters of the U.S., retaining walls that are adjacent to those waters shall use appropriate colors, materials, or textures for the purpose of blending the walls into the overall landscape.
2. BNSF shall employ permanent structural BMPs to remove oil and grease in discharges of storm water runoff.
3. BNSF shall fully implement the Final March 2007 HMMP for purposes of compensating for impacts of discharges of fill to the beneficial uses of waters of the U.S.
4. Regional Board staff and other authorized representatives shall be allowed:
 - a. Entry upon premises where storm water BMPs are located, or where records are kept under the requirements of this Certification or other applicable waste discharge requirements;
 - b. Access to copy any records that are kept under the requirements of this Certification and other applicable waste discharge requirements;
 - c. To inspect any facility, equipment (including monitoring and control equipment), practices, or operations related to the treatment of storm water runoff from the project; and
 - d. To photograph, sample and monitor for the purpose of assuring compliance with this Certification.
5. This Certification and any subsequent amendments shall be maintained on site as a denoted element of any SWPPP.



Under California Water Code, Section 1058, and Pursuant to 23 CCR §3860, the following shall be included as conditions of all water quality certification actions:

- (a) Every certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section §13330 of the Water Code and Article 6 (commencing with Section 3867) of this Chapter.
- (b) Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to Subsection §3855(b) of this Chapter and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
- (c) Certification is conditioned upon total payment of any fee required under this Chapter and owed by the applicant.

Although we anticipate no further regulatory involvement, if the above stated conditions are changed, any of the criteria or conditions as previously described are not met, or new information becomes available that indicates a water quality problem, we may formulate Waste Discharge Requirements.

In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification.

In response to a suspected violation of any condition of this certification, the Santa Ana Regional Water Quality Control Board (Regional Board) may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the Regional Board deems appropriate. The burden, including costs, of the reports shall be reasonable in relation to the need for the reports and the benefits to be obtained from the reports.

In response to any violation of the conditions of this certification, the Regional Board may add to or modify the conditions of this certification as appropriate to ensure compliance. Pursuant to California Code of Regulations Section 3857, we will take no further action on your application. This letter constitutes a technically conditioned water quality certification. Please notify our office five (5) days before construction begins on this project.



May 25, 2007

This letter constitutes a Water Quality Standards Certification issued pursuant to Clean Water Act Section 401. I hereby issue an order certifying that any discharge from the referenced project will comply with the applicable provisions of Sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other applicable requirements of State law. This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ (Order No. 2003-0017-DWQ), "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received Water Quality Certification" which requires compliance with all conditions of this Water Quality Standards Certification. Order No. 200-0017-DWQ is available at www.swrcb.ca.gov/resdec/wqorders/2003/wqo/wqo2003-0017.pdf

Should there be any questions, please contact Adam Fischer at (951) 320-6363, or Mark Adelson at (951) 782-3234.

Sincerely,



GERARD J. THIBEAULT
Executive Officer

cc (via electronic mail):

U. S. Army Corps of Engineers, Los Angeles Office – Gerardo Salas
State Water Resources Control Board, OCC – Erik Spiess
State Water Resources Control Board, DWQ-Water Quality Certification Unit –
Jenny Chen
Lahontan Regional Water Quality Control Board – Tobi Tyler
California Department of Fish and Game, Ontario Office – Jeff Brandt
U.S. EPA, Supervisor of the Wetlands Regulatory Office WTR- 8 – Tim Vendlinski

cc: U.S. Forest Service, 604 South Tippecanoe Ave., San Bernardino, 92408 – Steve Loe

